THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.30945 of 1997

Dated 23-04-2007

Between:
K.Yesupadam.

..... PETITIONER

AND

A.P.S.R.T.C. rep. By its Vice chairman & Managing Director, Musheerabad, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.30945 of 1997

O R D E R:

Heard Sri G.Ramachandra Rao, learned counsel for the petitioner. None appears on behalf of the respondent-Corporation.

The petitioner seeks a declaration that he is deemed to have been promoted to the post of Assistant Mechanical Foreman when his immediate juniors were promoted in the year 1989 with all consequential and attendant benefits including promotion to the next higher post of Mechanical Foreman.

Facts, in brief, are that the petitioner was appointed as Mechanic Grade-II in the respondent-Corporation on 11-11-1970. He was subsequently promoted as a Leading Hand on 25-10-1978. The second respondent issued a notification on 22-02-1989 publishing the provisional seniority list of Mechanical Chargemen who were appointed prior to 31-12-1984. Though the petitioner was promoted as Mechanical Chargeman prior thereto on 17-05-1984, his name was not found in the said seniority list. On the ground that his name was illegally deleted from the provisional seniority list, the petitioner initially submitted a representation on 12-03-1989 and subsequent representations were submitted by him from time to time. In the meanwhile two persons, juniors to the petitioner, were promoted from the category of Mechanical Chargeman to that of Assistant Mechanical Foreman on 09-05-1989.

While matters stood thus, the petitioner was reverted from the post of Mechanical Chargeman to that of a Leading Hand on 26-04-1990. Aggrieved thereby, he filed W.P.No.8680 of 1990 and this Court, by order dated

17-07-1995, allowed the writ petition holding that the judgment in W.P.No.7892 of 1990 dated 09-04-1994 applied on all fours to W.P.No.8680 of 1990 also. Thereafter, proceedings dated 11-04-1996 were issued promoting the petitioner as Mechanical Chargeman in the time scale of pay of Rs.630-1090/- with effect from 17-05-1984 and, on promotion as Mechanical Chargeman, the petitioner was retained at Khammam depot.

The grievance of the petitioner, in this writ petition, is that while two of his juniors were promoted to the next higher post of Assistant Mechanical Foreman on
09-05-1989, the petitioner was denied promotion to the said post. Petitioner would contend that as a consequence of the order of this Court, in W.P.No.8680 of 1990 dated
17-07-1995, he must be deemed to have been promoted as Assistant Mechanical Foreman from 09-05-1985 and to be paid all consequential monetary benefits pursuant thereto.

One other fact which is required to be taken note of is that the petitioner was subsequently promoted as an Assistant Mechanical Foreman on 08-01-1997 and that he has since retired from service.

In the counter affidavit, filed on behalf of the respondents, it is stated that since the petitioner had opted for Sathavahana region, he has no right to claim promotion to the post of Mechanical Chargeman on regular basis in Kakatiya region and, therefore, the Regional Manager of Kakatiya region was directed to revert the petitioner to the post of Leading Hand, that pursuant to the order of this Court, in W.P.No.8680 of 1990 dated 17-07-1995, the petitioner has been treated as an employee of erstwhile Kakatiya region(presently Karimnagar Zone) and that he was promoted to the post of Mechanical Foreman from
17-05-1984 and retained in the Khammam depot. Respondents would also state that the post of Assistant Mechanical Foreman is a

selection post, that a selection committee was constituted to select candidates to the said post, that promotion to the said post cannot be made with retrospective effect and can only be made when vacancies arise as per the rules. Respondent-Corporation would place reliance on the circular dated 13-11-1989. Reference is also made to the fact that the selection committee, in its meeting held on 10-06-1997, considered the case of the petitioner for promotion to the post of Assistant Mechanical Foreman and, after examining his case, the selection committee opined that since promotion as Assistant Mechanical Foreman was already given to him with effect from 08-01-1997 his case could not be considered for promotion from a retrospective date. It is stated that the decision of the selection committee was also communicated to the petitioner by letter dated 28-10-1997.

The fact that the said proceedings dated 28-10-1997 was issued, whereby the petitioner was communicated the decision of the selection committee not to promote him to the post of Assistant Mechanical Foreman from a retrospective date, is not in dispute.

Sri G.Ramachandra Rao, learned counsel for the petitioner, would, however, refer to the averments in para 7 of the counter affidavit to submit that while the petitioner had exercised his option to go to Sathavahana region, he continued to work in Kakatiya region (Karimnagar Zone) and was promoted to the post of Mechanical Foreman on

17-05-1984 and retained him in Khammam depot. Learned counsel would submit that mere exercise of option would not disentitle the petitioner from being considered for promotion to the post of Assistant Mechanical Foreman in Karimnagar Zone, more so when the said option was not given effect to and the petitioner was, in fact, not posted in Sathavahana region.

While this submission of Sri G.Ramachandra Rao, learned counsel for the petitioner, is not without merit, the fact remains that the decision of the selection committee, holding that the petitioner was not entitled to be promoted retrospectively, is not under challenge in this writ petition. While a specific averment is made in paragraph 9 of the counter affidavit that the decision of the selection committee was communicated to the petitioner by letter dated 28-10-1997, this fact is neither denied by way of a reply affidavit nor a copy thereof is placed before this Court. There is no reason, therefore, to disbelieve the specific averment in the counter affidavit that the selection committee had decided that the petitioner could not be promoted as an Assistant Mechanical Foreman retrospectively. If the petitioner had any grievance with regards the decision of the selection committee, it was for him to challenge the same in appropriate proceedings. Having failed to do so, it is not open to the petitioner to contend that he must be deemed to have been promoted as an Assistant Mechanical Foreman from the date his juniors were promoted on 09-05-1989.

The Writ Petition fails and is accordingly dismissed. No costs.

_____

23-04-2007

usd